

**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF CALIFORNIA

RODOLFO MARTINEZ,

Plaintiff,

v.

SHERMAN,

Defendants.

Case No. 1:21-cv-01319-ADA-BAM (PC)

Appeal No. 22-16458

ORDER REGARDING *IN FORMA PAUPERIS*  
STATUS ON APPEAL

Plaintiff Rodolfo Martinez (“Plaintiff”) is a state prisoner who proceeded *pro se* and *in forma pauperis* in this civil rights action pursuant to 42 U.S.C. § 1983.

On September 2, 2022, the District Judge adopted in full the undersigned’s findings and recommendations and dismissed this action, with prejudice, for failure to state a cognizable claim upon which relief may be granted. (ECF No. 19.) Judgment was entered accordingly the same date. (ECF No. 20.) On September 21, 2022, Plaintiff filed a notice of appeal.<sup>1</sup> (ECF No. 21.)

On September 27, 2022, the Ninth Circuit Court of Appeals referred the matter back to this Court for the limited purpose of determining whether *in forma pauperis* status should continue for the appeal. 28 U.S.C. § 1915(a)(3). The Court finds that this appeal is not taken in

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<sup>1</sup> To the extent Plaintiff’s notice of appeal includes a motion for a certificate of appealability pursuant to Federal Rule of Appellate Procedure 22(b), Plaintiff is advised that while certificates of appealability are required in *habeas corpus* actions, they are not needed in a civil rights action pursuant to 42 U.S.C. § 1983, such as this one.

1 bad faith and is not frivolous. Accordingly, *in forma pauperis* status should not be revoked and  
2 should continue on appeal.

3  
4 IT IS SO ORDERED.

5 Dated: September 28, 2022

/s/ Barbara A. McAuliffe  
6 UNITED STATES MAGISTRATE JUDGE